

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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CINTHIA THEVENIN, Individually, and as wife of  
EDSON THEVENIN, Decedent, and as Administratrix  
Of the Estate of EDSON THEVENIN, and as mother  
and natural guardian, of Infant N.T. and as mother and  
natural guardian of Infant Z.T.,

Plaintiffs,

- against -

THE CITY OF TROY, and SERGEANT RANDALL  
FRENCH,

Defendants.

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**DEFENDANTS' RESPONSE  
TO PLAINTIFF'S SECOND  
DEMAND FOR THE  
PRODUCTION OF  
DOCUMENTS**

Docket No.:  
1:16-CV-1115(NAM/DJS)

Defendants City of Troy and Sergeant Randall French (hereinafter "Answering Defendants"), by and through their attorneys, Fitzgerald Morris Baker Firth, P.C., as and for a response to Plaintiff's Second Demand for the Production of Documents dated September 11, 2017, states the following upon information and belief:

**DEMAND FOR DOCUMENTS**

16. Attached hereto as Exhibit "A" are performance evaluations for Randall French prepared by Captain Montanino during the period of January 1, 2014 through April 17, 2016.

17. Answering Defendants are not in possession of any documents responsive to this demand.

18. Attached hereto as Exhibit "B" is a copy of the Troy Police Department blotter for April 17, 2016.

19. Answering Defendants are not in possession of any documents responsive to this demand.

20. Answering Defendants are not in possession of any documents responsive to this demand.

21. Attached hereto as Exhibit "C" is a photograph of the OC spray issued to and carried by Sgt. French on April 17, 2016, indicating the expiration date, as well as an Evidence Collection Report Troy Police Department blotter for April 17, 2016.

22. Attached hereto as Exhibit "D" is a copy of the Troy Police Department Chain of Custody Report indicating the chain of custody for the OC spray issued to and carried by Sgt. French on April 17, 2016.

23. Attached hereto as Exhibit "E" is a copy of the Supplemental Report prepared by the New York State Police, previously produced at page 105 of Exhibit "B" to Defendants' Response to Plaintiff's First Demand for the Production of Documents.

24. Attached hereto as Exhibit "F" is a copy of the last two pages of Sgt. French's notebook from on or about April 17, 2016.

25. Attached hereto as Exhibit "G" is a copy of the records pertaining to Sgt. French's use of the Troy Police Department Mobile Data Terminal for April 17, 2016, previously reproduced at page 17 of Exhibit "B" to Defendants' Response to Plaintiff's First Demand for the Production of Documents.

26. See response to paragraph "25".

27. Answering Defendants object to this demand as it seeks information beyond the permissible scope of Fed. R. Civ. Proc. Rule 26(b)(1) as being irrelevant to the subject matter of the action and/or not reasonably calculated to lead to the discovery of admissible evidence.

28. Answering Defendants are not in possession of any documents responsive to this demand.

29. Answering Defendants are not in possession of any documents responsive to this demand.

30. Answering Defendants object to this demand as it seeks information beyond the permissible scope of Fed. R. Civ. Proc. Rule 26(b)(1) as being irrelevant to the subject matter of the action and/or not reasonably calculated to lead to the discovery of admissible evidence.

31. Answering Defendants are not in possession of any documents responsive to this demand.

32. Answering Defendants object to this demand as it seeks information beyond the permissible scope of Fed. R. Civ. Proc. Rule 26(b)(1) as being irrelevant to the subject matter of the action and/or not reasonably calculated to lead to the discovery of admissible evidence. Additionally, any communication made between Sgt. French and his criminal defense attorney are subject to attorney-client privilege.

33. Answering Defendants object to this demand as it seeks information beyond the permissible scope of Fed. R. Civ. Proc. Rule 26(b)(1) as being irrelevant to the subject matter of the action and/or not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding this objection, and without waiving same, attached hereto as Exhibit "H" is a copy of Sgt. French's medical records from Albany Medical Center and OrthoNY.

34. Answering Defendants object to this demand as it seeks information beyond the permissible scope of Fed. R. Civ. Proc. Rule 26(b)(1) as being irrelevant to the subject matter of the action and/or not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding this objection, and without waiving same, limited authorizations for the records disclosed herein will be provided under separate cover.

35. See Exhibit "H".

36. Answering Defendants object to this demand as it seeks information beyond the permissible scope of Fed. R. Civ. Proc. Rule 26(b)(1) as being irrelevant to the subject matter of the action and/or not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding this objection, and without waiving same, limited authorizations for the records disclosed herein will be provided under separate cover.

37. Answering Defendants object to this demand as it seeks information beyond the permissible scope of Fed. R. Civ. Proc. Rule 26(b)(1) as being irrelevant to the subject matter of the action and/or not reasonably calculated to lead to the discovery of admissible evidence.

38. Answering Defendants object to this demand as it seeks information beyond the permissible scope of Fed. R. Civ. Proc. Rule 26(b)(1) as being irrelevant to the subject matter of the action and/or not reasonably calculated to lead to the discovery of admissible evidence.

39. Attached hereto as Exhibit "I" is a copy of Sgt. French's sick leave report.

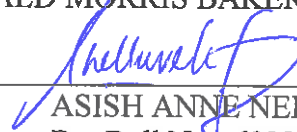
40. Attached hereto as Exhibit "J" is a copy of General Order No. 06.02 which was promulgated by the Troy Police Department prior to the version dated April 11, 2016.

Answering Defendants will treat the Plaintiff's demands as continuous throughout the pendency of this action and reserve the right to supplement this response should more information become available.

DATED: October 17, 2017

FITZGERALD MORRIS BAKER FIRTH, P.C.

By



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